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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/769,901

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Thomas M. Eubanks

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EXAMINER

GELIN, JEAN ALLAND

ART UNIT

PAPER NUMBER

2617

MAIL DATE

DELIVERY MODE

11/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/769,901	Applicant(s) EUBANKS, THOMAS M.	
	Examiner Jean A. Gelin	Art Unit 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 26 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Ravi et al. (US 6,240,280).

Regarding claim 26, Ravi teaches a system (fig. 1), comprising: a CD player that produces an audio signal (i.e., disk player 18); a memory unit for storing one or more templates (i.e., stored program type codes, col. 3, lines 26-53); and a recognition processor, coupled to said CD player and to said memory unit, for receiving said audio signal (i.e., inherently present in col. 2, lines 35-49 for the microcontroller to detect and monitor incoming information such traffic announcement, weather or news), generating templates from said audio signal (i.e., a flag in the audio signal), and matching said generated templates to said on or more templates stored in said memory unit (col. 2, line 53 to col. 3, line 53).

Regarding claim 28, Ravi teaches wherein a template is a digital representation of a sample of an audio signal (col. 2, line 53 to col. 3, line 53).

3. Claims 29-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Ravi et al. (US 6,240,280).

Regarding claim 29, Van Ryzin teaches a system, comprising: at least one control panel (i.e., for entering keyword into the system, col. 4, lines 1-5); means for producing an audio signal (fig. 1, CD, Tape, or radio); a speaker system, coupled to said audio signal producing means, for emitting sound associated with said audio signal (fig. 1, speaker 24); means for generating a template from said audio signal (i.e., for determining keywords in the audio signal, col. 2, line 66 to col. 3, line 27); means for determining whether a user of the system has activated a predetermined push button or buttons provided on said at least one control panel (col. 3, line 66 to col. 4, line 30); and adding means for adding said template to at least one of two or more sets of templates (i.e., keywords can be entered via a push button or speech recognition unit), wherein said adding means adds said template to said at least one of said two or more sets of templates if said determining means determines that said user has activated said predetermined push button or buttons (col. 2, line 66 to col. 4, line 27).

Regarding claim 30, Van Ryzin teaches said means for producing an audio signal is a tuner (10) that receives a signal transmitted from a radio station and produces said audio signal from said signal (col. 1, lines 55-67).

Regarding claim 31, Van Ryzin teaches said means for producing an audio signal is a compact disc player (CD 14 of fig. 1)

Regarding claims 32 and 34, Van Ryzin teaches producing an audio signal (i.e., function of tuner or CD of fig. 1); generating the template from said audio signal (i.e., at

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least one device generates audio signal or data wherein information in the generated signal can be compared with the preselected audio information, col. 1, line 55 to col. 2, line 13); determining whether a user of the system has indicated a dislike of the content associated with said audio signal (i.e., user decides what type of report or information he/she want to hear, col. 3, line 65 to col. 4, line 5); and adding said template to the set of templates if said determining means determines that said user has indicated a dislike of the content associated with said audio signal (i.e., keywords can be entered via a push button or speech recognition unit col. 3, line 66 to col. 4, line 27, and user decides what type of report or information he/she want to hear, col. 3, line 65 to col. 4, line 5).

Regarding claims 33 and 35, Van Ryzin teaches determining whether a user of the system has indicated a dislike of the content associated with said audio signal comprises the step of determining whether a user of the system has activated a predetermined push button or buttons provided on the at least one control panel (i.e., user decides what type of report or information he/she want to hear, col. 3, line 65 to col. 4, line 5).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ravi in view of Mimick et al. (US 5,594,601).

Regarding claim 27, Ravi teaches all the limitations above except programming a CD player wherein the CD player is caused to automatically skip to a next song.

However, the preceding limitation is known in the art of communications. Mimick teaches a method that allows a user to program or edit, via keystrokes, a program or sequence of tracks to be played (abstr.). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of Mimick within the system of Ravi in order to allow a user to program the communication device, and play only the desired track.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 26-35 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,704,553.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 26-35 of the present application are a broader version of claims 1-20 of the US Patent No. 6,704,553 as follows.

Claims 1 and 7 of the US Pat. No. 6,704,553 includes all the limitations of claim 26 of the instant application except a CD player that produces an audio signal. However, claim 1 of the US Pat. teaches a tuner that produces an audio signal. Given that both the tuner and CD player perform the same function (producing audio signal), it would have been obvious to one of ordinary skill in the art, at the time of the invention to implement a CD player, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claim 27, US Pat. No. 6,704,553 teaches all the limitations above except programming a CD player wherein the CD player is caused to automatically skip to a next song.

However, the preceding limitation is known in the art of communications. *Mimick* teaches a method that allows a user to program or edit, via keystrokes, a program or sequence of tracks to be played (abstr.). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of

Mimick within the system of US Pat. No. 6,704,553 in order to allow a user to program the communication device, and play only the desired track.

Claim 28 of the instant application is equivalent to claim 2 of US Pat. No. 6,704,553.

8. Claims 29-35 rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,704,553 in view of Van Ryzin.

Regarding claims 29 and 30, claims 1, 7, 16, and 17 of US Pat. No. 6,704,553 teaches means for producing an audio signal, at least one control panel; means for generating a template from said audio signal. The remaining limitations are disclosed by Van Ryzin wherein Van Ryzin teaches a system, comprising: means for determining whether a user of the system has activated a predetermined push button or buttons provided on said at least one control panel (col. 3, line 66 to col. 4, line 30); and adding means for adding said template to at least one of two or more sets of templates (i.e., keywords can be entered via a push button or speech recognition unit), wherein said adding means adds said template to said at least one of said two or more sets of templates if said determining means determines that said user has activated said predetermined push button or buttons (col. 2, line 66 to col. 4, line 27). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of Van Ryzin within the system of US Pat. No. 6,704,553 in order to have a system that has a plurality of audio signal source such as radio tuner CD, and tape.

Regarding claim 31, US Pat. No. 6,704,553 in view of Van Ryzin teaches all the limitations above. Van Ryzin further teaches means for producing audio signal is a CD (fig. 1).

Regarding claims 32 and 34, claims 16, and 17 of US Pat. No. 6,704,553 teaches all the limitations except adding said template to the set of templates if said determining means determines that said user has indicated a dislike of the content associated with said audio signal.

However, the preceding limitation is known in the art of communications. Van Ryzin teaches, keywords can be entered via a push button or speech recognition unit col. 3, line 66 to col. 4, line 27, and user decides what type of report or information he/she want to hear, col. 3, line 65 to col. 4, line 5. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of Van Ryzin within the system of US Pat. No. 6,704,553 in other that user can decide the type of information he/she wants to listen.

Regarding claims 33 and 35, US Pat. No. 6,704,553 in view of Van Ryzin teaches all the limitations above. Van Ryzin further teaches determining whether a user of the system has indicated a dislike of the content associated with said audio signal comprises the step of determining whether a user of the system has activated a predetermined push button or buttons provided on the at least one control panel (i.e., user decides what type of report or information he/she want to hear, col. 3, line 65 to col. 4, line 5).

Conclusion

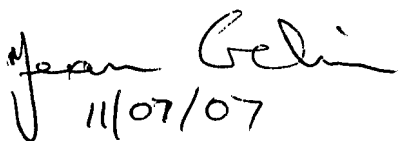
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Fleming, III	US 6,175,537	01/16/2001
Nomaka et al.	US 5,430,698	07/04/1995
Johnson	US 5,872,747	02/16/1999
Heckerman et al.	US 5,704,017	12/30/1997

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean A. Gelin whose telephone number is (571) 272-7842. The examiner can normally be reached on 9:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on (571) 272-7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


11/07/07

JEAN GELIN
PRIMARY EXAMINER